

REMARKS

Claims 64, 66-81, and 123-141 are pending.

The Office Action rejected claims 64, 124, 125, 127 and 129-131 under 35 U.S.C. Section 102 (e) as being anticipated by Swanson et al (6,113,612).

The Office Action rejected claims 66-74, 126, 132, 135-137 and 139-141 as being anticipated by LeMole (5,893,369).

Claim 75 was rejected under 35 U.S.C. Section 103 as being obvious over LeMole in view of Ho (6,514,265).

Claims 77-81 were allowed.

Claims 76, 123, 128, 133, 134 and 138 were indicated as being allowable if rewritten. Claims 76, 123 and 128 are rewritten herein in independent form.

The election of species requirement in this case is formally withdrawn.

Swanson et al Rejection

Claim 64, 124, 125, 127 and 129-131 were rejected 35 U.S.C. § 102(e) as being anticipated by Swanson et al (U.S. Patent No. 6,113,612).

Claim 64 recites “the cannula is introduced into the vessel wall from the interior of the vessel” and this is not disclosed or suggested in Swanson et al. The previous Office Action stated that tube 240 in Swanson et al is positioned in the vessel wall from the interior of the vessel using guidewire 210, which is in the interior of the vessel. Applicants argued that Swanson et al does not introduce tube 240 into a vessel wall from the interior of the vessel as set forth in amended claim 64. In response, the Final Rejection stated, “Swanson et al. indeed disclose a cannula (110)....”

It is respectfully submitted that this substantively changes the rejection of claim 64 in that the Final Rejection is reading the reference in a different fashion than the original Office Action. Applicant was not given a chance to respond to this substantively changed rejection prior to it being made final. As a result, it was improper to make this rejection final. Applicants respectfully request withdrawal of the finality of the most recent Office Action.

Further, component 110 of Swanson et al is a balloon. It is not a cannula as alleged in the Final Rejection.

Claim 127 sets forth “passing the first end of the tubular member from the interior of the vessel through the vessel wall at a first vessel wall location...” It is respectfully submitted that Swanson et al. does not disclose this step. If the Examiner disagrees, applicant respectfully requests clarification as to how this disclosure is being read on claim 127.

Accordingly, reconsideration and withdrawal of the rejections under Swanson et al is requested.

LeMole

Claims 66-74, 126, 132, 135-137 and 139-141 were rejected under 35 U.S.C. § 102(e) as being anticipated by LeMole (U.S. Patent No. 5,893,369).

Claim 66 recites: anastomosing a graft to the vessel at the opening. In contrast, LeMole attaches graft 14 to vessel 12 before forming an opening in the vessel (see, e.g., column 5, line 34-column 6, line 36). Therefore, LeMole does not disclose or suggest the method claimed in claim 66. The Final Rejection stated, “Lemole indeed discloses forming an opening in the vessel wall before and during anastomosing a graft to the vessel at the opening. That is, forming the opening complete the anastomosing process by forming a flow path between the graft and the vessel.” However, no citation to Lemole was set forth in support of this argument. The Final Rejection argument ignores that claim 66 recites a method for performing an anastomosis ... *while maintaining blood flow within the vessel*” Lemole cannot both form a flow path and also maintain blood flow through that path. As a result, the rejection is not clear. Accordingly, reconsideration and withdrawal of the rejections based on LeMole are requested.

Lemole in view of Ho et al

Claim 75 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Lemole in view of Ho et al (U.S. Patent No. 6,514, 265). Claim 75 indirectly depends from claim 66. Since Ho et al does not make up for the deficiencies in Lemole as noted above in connection with claim 66, a *prima facie* case of obviousness has not been established. Reconsideration and withdrawal of this rejection is requested.

CONCLUSION

Applicant submits that the pending claims are in condition for allowance and respectfully requests the issuance of a formal Notice of Allowance at an early date. If a telephone interview would advance prosecution of the application, the Examiner is invited to telephone the undersigned at the number provided below.

A petition for a one-month extension of time accompanies this amendment.

Please charge the fee of \$630.00 for the submission of three extra independent claims to Deposit Account No. 13-2546. Also, please charge the fee of \$120.00 for the one-month extension of time to Deposit Account No. 13-2546.

If Patent Office determines that an additional extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due, including additional claims fees, in connection with the filing of this document to Deposit Account No. 13-2546 referencing Attorney Docket No. P-21729.02.

Respectfully submitted,

Date March 6, 2008

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